IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO..165 of 2004

Smt.Pramila Narhari Paranjape .. Petitioner
versus
Hardikars New Shortand and
Typewriting Institute .. Respondents

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Ms.Chandana Radia for the petitioner.
Mr.J. Shekhar i/b J.Shekhar & Co. for the respondents

CORAM : B.H. MARLLAPALLE,J

DATED : 18th August 2005.

P.C.:

1. Heard Ms.Chandana, the learned counsel for the petitioners who are defendants in Civil Suit No.4 of 2003 filed before the Court of Small causes at Pune. Heard Mr. Shekhar learned counsel for the respondents plaintiffs.

2. An application at Exhibit-46 came to be filed in the said suit by the defendants raising the issue of territorial jurisdiction under section 9A of the Code of Civil Procedure as well as praying for return of the plaint under Order VII Rule 11 of the Code of Civil Procedure. By a common order dated

21st January 2004, the learned Judge of the Small Causes Court at pune had decided the said application at Exhibit-46 and in Writ Petition no. 2324 of 2004, the said order was challenged. This Court was pleased to dispose of the Writ Petition by directing the Small Causes Court to decide the application afresh and pass two separate orders within six weeks. The Small Causes Court was therefore called upon to decide the issue of territorial jurisdiction u/s.9A of the Code of Civil Procedure and return of plaint under Order VII Rule 7 of the Code of Civil Procedure by two separate orders. On remand,, in obedience of the directions issued by this Court,, learned Judge of the Small Causes Court has passed two separate orders and rejected both the pleas of the defendants. The impugned order in this Civil Revision Application has held that the Small Causes Court has the jurisdiction to entertain the suit and thus, application u/s.9A of the Code of Civil Procedure has been rejected.

3. The learned counsel for the petitioner submitted that the view taken by the learned Judge of the Small Causes Court regarding jurisdiction is erroneous. In support of this argument it was

contended that the original tenant was late Data Hardikar and not the firm which could not be termed as a tenant. There is no dispute that Shri Dada Hardikar was one of the three partners of the partnership firm i.e. the plaintiff which was registered way back in the year 1968 and with three partners. From 1968 onwards, no such objection was raised against the partnership stating that it was not a tenant by the defendant landlord. Even on the demise of Dada Hardikar on 14th July 1970, the landlord did not take a plea that the partnership firm was not a tenant. The defendant landlord kept mum for more than 35 years after the partnership was registered and the suit premises continued to be occupied by the same firm, which was paying the rent to the landlord.

4. Under such circumstances, the reasons set out by the trial court in holding that it had the jurisdiction to entertain and try the suit cannot be faulted with in this Revision Application.

5. The Revision is therefore rejected summarily.

B.H. MARLAPALLE, J